

Union Calendar No. 69

109TH CONGRESS
1ST SESSION

H. R. 420

[Report No. 109–123]

To amend Rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 2005

Mr. SMITH of Texas (for himself, Mr. DELAY, Mr. CHABOT, Mr. PAUL, Mr. GREEN of Wisconsin, Mr. HERGER, Mr. KELLER, Mr. KING of Iowa, Mr. SHAYS, Mr. CANNON, Mr. BRADY of Texas, Mr. NORWOOD, Mr. NEUGEBAUER, Mr. CHOCOLA, Mr. MILLER of Florida, Mr. FEENEY, Mr. FORBES, Mr. GARY G. MILLER of California, Mr. CULBERSON, Mr. GARRETT of New Jersey, Mr. LEACH, Mr. KLINE, Mr. GALLEGLY, Mr. OTTER, Mr. JONES of North Carolina, Mr. KENNEDY of Minnesota, Mrs. MYRICK, Mr. MCCAUL of Texas, Mr. BOOZMAN, Mr. FRANKS of Arizona, Mr. SENSENBRENNER, Mr. GOODLATTE, Mr. FERGUSON, Mr. WILSON of South Carolina, Mr. BRADLEY of New Hampshire, Mr. CALVERT, Mr. FORTUÑO, Mr. KIRK, and Mrs. JO ANN DAVIS of Virginia) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 14, 2005

Additional sponsors: Mr. SOUDER, Mr. CONAWAY, Mr. ROHRABACHER, Mr. LEWIS of Kentucky, Mr. COX, Mr. SIMPSON, Mr. BARTLETT of Maryland, Mr. GUTKNECHT, Mr. NEY, Mr. MCHENRY, Mrs. CUBIN, Ms. GINNY BROWN-WAITE of Florida, Mr. ROGERS of Michigan, Mr. HENSARLING, Mr. AKIN, Mr. STEARNS, Mr. INGLIS of South Carolina, Mr. BACHUS, and Mr. PUTNAM

JUNE 14, 2005

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 26, 2005]

A BILL

To amend Rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Lawsuit Abuse Reduc-*
5 *tion Act of 2005”.*

6 **SEC. 2. ATTORNEY ACCOUNTABILITY.**

7 *Rule 11(c) of the Federal Rules of Civil Procedure is*
8 *amended—*

9 *(1) by amending the first sentence to read as fol-*
10 *lows: “If a pleading, motion, or other paper is signed*
11 *in violation of this rule, the court, upon motion or*
12 *upon its own initiative, shall impose upon the attor-*
13 *ney, law firm, or parties that have violated this sub-*
14 *division or are responsible for the violation, an ap-*
15 *propriate sanction, which may include an order to*
16 *pay the other party or parties for the reasonable ex-*
17 *penses incurred as a direct result of the filing of the*
18 *pleading, motion, or other paper, that is the subject*

1 *of the violation, including a reasonable attorney’s*
 2 *fee.”;*

3 *(2) in paragraph (1)(A)—*

4 *(A) by striking “Rule 5” and all that fol-*
 5 *lows through “corrected.” and inserting “Rule*
 6 *5.”; and*

7 *(B) by striking “the court may award” and*
 8 *inserting “the court shall award”; and*

9 *(3) in paragraph (2), by striking “shall be lim-*
 10 *ited to what is sufficient” and all that follows through*
 11 *the end of the paragraph (including subparagraphs*
 12 *(A) and (B)) and inserting “shall be sufficient to*
 13 *deter repetition of such conduct or comparable con-*
 14 *duct by others similarly situated, and to compensate*
 15 *the parties that were injured by such conduct. The*
 16 *sanction may consist of an order to pay to the party*
 17 *or parties the amount of the reasonable expenses in-*
 18 *curring as a direct result of the filing of the pleading,*
 19 *motion, or other paper that is the subject of the viola-*
 20 *tion, including a reasonable attorney’s fee.”.*

21 **SEC. 3. APPLICABILITY OF RULE 11 TO STATE CASES AF-**
 22 **FFECTING INTERSTATE COMMERCE.**

23 *In any civil action in State court, the court, upon mo-*
 24 *tion, shall determine within 30 days after the filing of such*
 25 *motion whether the action substantially affects interstate*

1 *commerce. Such court shall make such determination based*
 2 *on an assessment of the costs to the interstate economy, in-*
 3 *cluding the loss of jobs, were the relief requested granted.*
 4 *If the court determines such action substantially affects*
 5 *interstate commerce, the provisions of Rule 11 of the Fed-*
 6 *eral Rules of Civil Procedure shall apply to such action.*

7 **SEC. 4. PREVENTION OF FORUM-SHOPPING.**

8 (a) *IN GENERAL.*—Subject to subsection (b), a personal
 9 *injury claim filed in State or Federal court may be filed*
 10 *only in the State and, within that State, in the county (or*
 11 *Federal district) in which—*

12 (1) *the person bringing the claim, including an*
 13 *estate in the case of a decedent and a parent or*
 14 *guardian in the case of a minor or incompetent—*

15 (A) *resides at the time of filing; or*

16 (B) *resided at the time of the alleged injury;*

17 (2) *the alleged injury or circumstances giving*
 18 *rise to the personal injury claim allegedly occurred;*

19 (3) *the defendant's principal place of business is*
 20 *located, if the defendant is a corporation; or*

21 (4) *the defendant resides, if the defendant is an*
 22 *individual.*

23 (b) *DETERMINATION OF MOST APPROPRIATE*
 24 *FORUM.*—If a person alleges that the injury or cir-
 25 *cumstances giving rise to the personal injury claim oc-*

1 *curred in more than one county (or Federal district), the*
2 *trial court shall determine which State and county (or Fed-*
3 *eral district) is the most appropriate forum for the claim.*
4 *If the court determines that another forum would be the*
5 *most appropriate forum for a claim, the court shall dismiss*
6 *the claim. Any otherwise applicable statute of limitations*
7 *shall be tolled beginning on the date the claim was filed*
8 *and ending on the date the claim is dismissed under this*
9 *subsection.*

10 *(c) DEFINITIONS.—In this section:*

11 *(1) The term “personal injury claim”—*

12 *(A) means a civil action brought under*
13 *State law by any person to recover for a person’s*
14 *personal injury, illness, disease, death, mental or*
15 *emotional injury, risk of disease, or other injury,*
16 *or the costs of medical monitoring or surveillance*
17 *(to the extent such claims are recognized under*
18 *State law), including any derivative action*
19 *brought on behalf of any person on whose injury*
20 *or risk of injury the action is based by any rep-*
21 *resentative party, including a spouse, parent,*
22 *child, or other relative of such person, a guard-*
23 *ian, or an estate; and*

24 *(B) does not include a claim brought as a*
25 *class action.*

1 (2) *The term “person” means any individual,*
 2 *corporation, company, association, firm, partnership,*
 3 *society, joint stock company, or any other entity, but*
 4 *not any governmental entity.*

5 (3) *The term “State” includes the District of Co-*
 6 *lumbia, the Commonwealth of Puerto Rico, the*
 7 *United States Virgin Islands, Guam, and any other*
 8 *territory or possession of the United States.*

9 (d) *APPLICABILITY.—This section applies to any per-*
 10 *sonal injury claim filed in Federal or State court on or*
 11 *after the date of the enactment of this Act.*

12 **SEC. 5. RULE OF CONSTRUCTION.**

13 *Nothing in section 3 or in the amendments made by*
 14 *section 2 shall be construed to bar or impede the assertion*
 15 *or development of new claims or remedies under Federal,*
 16 *State, or local civil rights law.*

17 **SEC. 6. THREE-STRIKES RULE FOR SUSPENDING ATTOR-**
 18 **NEYS WHO COMMIT MULTIPLE RULE 11 VIO-**
 19 **LATIONS.**

20 (a) *MANDATORY SUSPENSION.—Whenever a Federal*
 21 *district court determines that an attorney has violated Rule*
 22 *11 of the Federal Rules of Civil Procedure, the court shall*
 23 *determine the number of times that the attorney has vio-*
 24 *lated that rule in that Federal district court during that*

1 attorney's career. If the court determines that the number
2 is 3 or more, the Federal district court—

3 (1) shall suspend that attorney from the practice
4 of law in that Federal district court for 1 year; and

5 (2) may suspend that attorney from the practice
6 of law in that Federal district court for any addi-
7 tional period that the court considers appropriate.

8 (b) *APPEAL; STAY.*—An attorney has the right to ap-
9 peal a suspension under subsection (a). While such an ap-
10 peal is pending, the suspension shall be stayed.

11 (c) *REINSTATEMENT.*—To be reinstated to the practice
12 of law in a Federal district court after completion of a sus-
13 pension under subsection (a), the attorney must first peti-
14 tion the court for reinstatement under such procedures and
15 conditions as the court may prescribe.

16 **SEC. 7. PRESUMPTION OF RULE 11 VIOLATION FOR REPEAT-**
17 **EDLY RELITIGATING SAME ISSUE.**

18 Whenever a party attempts to litigate, in any forum,
19 an issue that the party has already litigated and lost on
20 the merits on 3 consecutive prior occasions, there shall be
21 a rebuttable presumption that the attempt is in violation
22 of Rule 11 of the Federal Rules of Civil Procedure.

1 **SEC. 8. ENHANCED SANCTIONS FOR DOCUMENT DESTRUC-**
2 **TION.**

3 (a) *IN GENERAL.*—Whoever influences, obstructs, or
4 impedes, or endeavors to influence, obstruct, or impede, a
5 pending court proceeding through the intentional destruc-
6 tion of documents sought in, and highly relevant to, that
7 proceeding—

8 (1) *shall be punished with mandatory civil sanc-*
9 *tions of a degree commensurate with the civil sanc-*
10 *tions available under Rule 11 of the Federal Rules of*
11 *Civil Procedure, in addition to any other civil sanc-*
12 *tions that otherwise apply; and*

13 (2) *shall be held in contempt of court and, if an*
14 *attorney, referred to one or more appropriate State*
15 *bar associations for disciplinary proceedings.*

16 (b) *APPLICABILITY.*—*This section applies to any court*
17 *proceeding in any Federal or State court that substantially*
18 *affects interstate commerce.*

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